IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1176 OF 1998

WITH

CIVIL APPLICATION NO. 1314 OF 2005

M. L. Talwar ..Appellant

versus

The Municipal Corporation of

Greater Bombay ..Respondents

Mr. S. N. Vaishnav i/b. M/s. N. N. Vaishnav & Co. for the Appellant.

Mr. J. J. Xavier for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 5TH APRIL,2005

ORAL ORDER :

1. Heard counsel for the appellant and the respondents.

2. This Civil Application is taken out for restoration of the First Appeal which was dismissed in default. Sufficient cause is shown, therefore Civil Application is allowed. Appeal is restored to file.

3. This Appeal is filed by the original plaintiff against the dismissal of the suit by the City Civil Court upon a preliminary issue as to whether the suit of the plaintiff was maintainable for want of statutory notice under Section 527 of the MMC Act.

4. Counsel for the Appellant pointed out that the Respondents had not filed written statement but even then the court on its own accord framed an issue and dismissed the suit. Reliance was placed upon jdugment of this court reported in **1999 (3) Mh.L.J. 183 Ashraf Ahmed s/o. Aziz Ahmed Siddiqui vs. Municipal Corporation of Greater Bombay .** In view of this jdugment, order of dismissal of the suit is set aside. Suit is remanded back to the trial Court. Parties to appear before the trial court on 25.4.2005. Respondents - BMC to file written statement within eight weeks and the court to decide the suit within six months thereafter, on merits. No order as to costs. Interim order to continue. R. & P. if received be sent back to the trial court immediately.

5.04.2005 (D.G. DESHPANDE, J.)